

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

AUGUST J. DALLAS,

Defendant.

8:06CR78

ORDER COMPELLING PRODUCTION OF MEDICAL RECORDS

In accordance with Order [34], this matter is before the magistrate judge for supplemental proceedings related to the defendant's Motion to Determine Mental Competency [12] and whether the defendant should be required to receive antipsychotic medication involuntarily. *See Sell v. United States*, 539 U.S. 166, 180-82 (2003). The Federal Correctional Institution in Waseca, Minnesota has refused to produce the defendant's medical records to defense counsel. Consequently, the defendant has filed a motion [58] to compel the production of the following records from that facility:

- History and physical
- Narrative summary
- Laboratory reports
- X-ray reports
- Progress notes
- Consultations
- Operative reports
- Entire medical record
- All other documents contained in Defendant's medical record

I find that the government is required to produce these records pursuant to Fed. R. Crim. P. 16(a)(1)(F), which provides:

Reports of Examinations and Tests. Upon a defendant's request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

- (i) the item is within the government's possession, custody, or control;
- (ii) the attorney for the government knows—or through due diligence could know—that the item exists; and

- (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

The records requested are for "any physical or mental examination and of any scientific test or experiment"; the records are within the government's possession, custody, or control; the attorney for the government knows or should know that the records exist; and the records are material to preparing the defense in this case.

IT IS ORDERED that defendant's MOTION TO CONTINUE *SELL* HEARING AND FOR ORDER FOR PRODUCTION OF RECORDS [58] is granted, as follows:

1. As previously ordered, the *Sell* hearing is continued to **April 9, 2007 at 11:00 A.M.**, to be held by telephone call initiated by the court.

2. The government is given until and including **Thursday, April 5, 2007** to produce all medical records of the defendant from the Federal Correctional Institution in Waseca, Minnesota, i.e.,

- History and physical
- Narrative summary
- Laboratory reports
- X-ray reports
- Progress notes
- Consultations
- Operative reports
- Entire medical record
- All other documents contained in Defendant's medical record

DATED March 20, 2007.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**